

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

JEANNETTE DISTRICT MEMORIAL HOSPITAL

Employer

and

Case 6-RC-12181

JEANNETTE PROFESSIONAL NURSES
ASSOCIATION/PENNSYLVANIA ASSOCIATION
OF STAFF NURSES AND ALLIED
PROFESSIONALS (PASNAP)

Petitioner

ACTING REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Jeannette District Memorial Hospital, operates an acute care hospital in Jeannette, Pennsylvania. The Petitioner, Jeannette Professional Nurses Association/ Pennsylvania Association of Staff Nurses and Allied Professionals (PASNAP), filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to have the Board conduct a self-determination election to include all full-time and regular part-time registered nurse (RN) case managers in an existing RN staff nurse unit. A hearing officer of the Board held a hearing and the parties filed timely briefs.

As evidenced at the hearing and in the briefs, the parties disagree on the following issue: whether the case managers are required to be RNs who share a community of interest with the staff nurses.

The Petitioner contends, contrary to the Employer, that the case managers are required to be RNs and that the case managers and the Employer's other RNs share a community of interest. The voting group sought by the Petitioner has approximately six employees.

I have considered the evidence and the arguments presented by the parties on the issue presented. As discussed below, I have concluded that the case managers are required to be RNs and share a community of interest with the RN unit. Accordingly, I have directed an election in a voting group that consists of approximately six employees.

To provide a context for my discussion of the issue, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that support my conclusions on the issue.

I. OVERVIEW OF OPERATIONS

The Employer operates a short term acute care hospital in Jeannette, Pennsylvania. The hospital is located in a three story building and has 149 beds. The hospital presently employs four full-time case managers, who are RNs; one part-time case manager, who is an RN; and three per diem case managers, one of whom is an RN.

The Petitioner represents the staff RNs, having been certified in 1993 in Case 6-RC-10973. The Petitioner and the hospital are parties to a current collective-bargaining agreement covering the staff RNs, effective by its terms from November 1, 2002 to October 31, 2005. There is no history of collective bargaining for any of the case managers sought by the Petitioner in this case.

II. CASE MANAGERS

The duties of the Employer's case managers are typical of utilization review work and discharge planning generally performed in hospitals. For example, they review charts for necessity of admission and level of service, they work with managed care providers to ensure reimbursement, and they work with liaisons from other agencies and with third-party payors to transfer patients and arrange for necessary care after discharge. In addition, the case managers are responsible for quality management reviews.

In performing these duties, the case managers are required to be familiar with all aspects of patient care and to utilize knowledge of medical terms and procedures. They interact

with staff RNs, physicians, other clinical service providers, patients, family members, other entities providing health care, and insurance companies.¹

As noted, the hospital employs four full-time case managers, who are RNs: Linda Carlson, Debbie Chedister, Michelle Jones and Theresa Olesky. Also, the hospital employs one part-time case manager, who is an RN, Debbie Kear. In addition, the hospital employs three per diem case managers: Florence Andrasko, who is an RN, and Cathy Donahue and Mary Kay Cassarino, who are social workers.²

The per diem case managers do not work a regular schedule, but rather they merely fill in for absent case managers. During the 12-week period ending shortly before the hearing,³ Cassarino worked only 12.70 hours. Cassarino's functions are also severely limited. Because of her lack of clinical knowledge, she is considered a case worker and is limited to the review of Medicare charts; she does not perform discharge planning and she does not contact insurance companies.

Per diem case manager Donahue worked 78 hours during the same 12-week period. Before becoming a per diem case manager, Donahue had worked in the department on a full-time basis for several years. Specifically, before the current case management position was created, Donahue worked as a discharge planner. Thereafter, when the present position combining utilization review and discharge planner was created in September 1999, Donahue stayed on as a full-time case manager. In May 2002, Donahue resigned from the position of

¹ When interacting with insurance companies, the case managers are most frequently discussing matters with RNs employed by the insurance companies.

² In the case management department, the hospital also employs a case management coordinator, Arlene Lewis. She does only utilization review and quality reviews, and not discharge planning. The parties have stipulated that the case management coordinator is not included in the petitioned-for unit.

³ October 11, 2002 through January 3, 2003.

full-time case manager for personal reasons. She is currently working as a per diem case manager.

The third per diem case manager, Florence Andrasko, an RN, worked 184.75 hours during the same 12-week period.

III. BACKGROUND

The current case manager position is the outgrowth of the hospital's integration of its previously separate utilization review and social services functions. During the period 1997 to September 1999, there were two case managers, who were RNs, who performed utilization reviews. During this period, there were also two case managers, who were social workers, who performed discharge planning. The RN case managers and social worker case managers worked in tandem. Specifically, during this period, RN Martha Ann Rossi was paired with social worker Cathy Donahue, and RN Linda Carlson was paired with social worker Vicki Baker. A job description dated June 1997, which apparently covered both these RNs and social workers, listed the minimum educational qualifications as: "RN or Bachelor's Degree in Human Services."

In the fall of 1999, the current position was created when the two separate functions were merged, with each incumbent then performing the combined duties. At this time, Rossi was promoted to Director of Quality overseeing the newly defined case manager position, which position Rossi held until shortly before the hearing. As Director of Quality, Rossi was responsible for writing the case manager's job description, interviewing and hiring case managers, and evaluating case managers.

In connection with Rossi's promotion, on September 13, 1999, a full-time case manager position was posted. This posting listed the specific qualifications as "Registered Nurse." The position was awarded to RN Debbie Chedister, who currently holds it.

Thereafter, Vicki Baker resigned, and on December 8, 1999, a full-time case manager position was posted. Again, the posting listed the specific qualifications as "Registered Nurse." The position was awarded to RN Theresa Olesky, who currently holds it.

Subsequently, as part of a hospital-wide review of job descriptions, in early January 2001, Rossi prepared a revised job description for the case manager position. This job description listed the minimum educational qualifications as “RN, BSN preferred or BS degree in Social Work with equivalent clinical knowledge.”

Following the revision of the job description, a newly created position for a part-time case manager was posted on February 15, 2001. This posting listed the specific qualifications as “Registered Nurse, BSN preferred or BS Degree in Social Work with equivalent clinical knowledge,” and the position was awarded to RN Debbie Kear, who currently holds it.

As mentioned above, Cathy Donahue resigned, and on May 9, 2002, a position for a full-time case manager was posted. This posting listed the specific qualifications as “Registered Nurse, BSN preferred.” The position was awarded to RN Michelle Jones, who currently holds it. At that time, Donahue became a per diem case manager.⁴

Also discussed in the record was a job description for the case manager position dated October 2002 which had been obtained from the hospital’s Human Resources Department.⁵ It lists the minimum educational qualifications as “RN.”

Rossi testified that in directing the case management department, she considered the case manager position open to both RN and non-RN candidates. She explained that she had created the January 2001 job description and the February 15, 2001 job posting to reflect this understanding. In connection with this posting, she had interviewed non-RN candidates from outside of the hospital as well as RNs from within the hospital, although she awarded the position to RN Debbie Kear.

Rossi further testified that the omission of any non-RN qualifications from the May 9, 2002 job posting was a clerical oversight. With respect to the October 2002 job description,

⁴ Apparently, the per diem positions are not posted within the hospital.

⁵ The Approval line on the document is blank.

which states the position requires an RN, Rossi testified that she had never seen this document and was utilizing the January 2001 job description that she had prepared.

Rossi further testified that it is predominately RNs who respond to the postings for the case manager positions within the hospital because the case manager position is viewed by the RNs as a more desirable position than staff nurse.

IV. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

Urging inclusion of the case managers in the RN unit, the Petitioner contends that in addition to sharing the RN licensure, there is other evidence that the case managers share a community of interest with the RN unit. In this regard, the Petitioner points particularly to the similarity in terms and conditions of employment of the case managers and the nurse educators who are included in the RN unit. The Employer, on the other hand, takes the position that the case managers do not have to be RNs and do not otherwise share a community of interest with the staff RNs.

A. Case Managers

The case managers are part of the hospital's Quality Department and, as noted, are responsible for utilization review, discharge planning and quality reviews. While performing these duties, the case managers work in the case management central office, on the units in designated case management offices, and at the nurses stations. As noted above, they regularly interact with staff RNs, physicians, other clinical service providers, patients, insurance companies and entities providing post-discharge health care. Although the case managers do not provide direct patient care, their work is directly related to, and functionally integrated with, patient care.

The case managers work a daylight shift, with flexible starting and ending hours; they set their own lunch and break times, as work permits. They rotate in providing weekend coverage and do not work holidays.

Like all other employees in the hospital, the case managers clock in. They are paid on an hourly basis, and one full-time case manager testified that she was paid \$20.70 per hour. They are not eligible for overtime pay, shift differential, or on-call pay. They receive the same health benefits as the staff RNs. They wear business attire at work.

B. Staff RNs

The staff RNs are part of the hospital's Nursing Department, and are primarily responsible for providing direct patient care. They work shifts, weekends and holidays. The rate of pay for staff nurses ranges from \$16.98 to \$22.86 per hour. They are eligible for overtime pay, shift differential, and on-call pay. They may be assigned to work as charge nurses, they take scheduled breaks, and they are subject to a dress code.

C. Educators

As noted, the hospital employs two educators within the RN unit, who are responsible for orienting new nursing employees, directing staff education programs, and directing community education programs. Before the hospital's recent reorganization, the educators were in a separate Education Department, but they are now part of the Nursing Department. The educators have an office, and also work on the units when orienting new employees.

The educators work a daylight shift, with flexible hours; they set their own lunch and break times, as work permits. They do not work weekends. Their rate of pay ranges from \$20.59 to \$26.22 per hour, and they are not eligible for overtime pay.

V. CONTROLLING CASELAW

The Board generally has included in RN units those classifications which perform utilization review/discharge planning work where an employer requires or effectively requires RN licensing for the job. Salem Hospital, 333 NLRB No. 71 (2001); Pocono Medical Center, 305 NLRB 398 (1991); Middletown Hospital Association, 282 NLRB 541, 578 (1986); Frederick Memorial Hospital, 254 NLRB 36, 39 (1981), enf. denied 691 F.2d 191 (4th Cir. 1982); and Trustees of Noble Hospital, 218 NLRB 1441, 1444-1445 (1975). In cases where utilization

review/discharge planners were not required by the employer to be RNs, the Board has excluded them from the RN unit. Salem Hospital, supra; Charter Hospital of Orlando South, 313 NLRB 951, 954 (1994); Ralph K. Davies Medical Center, 256 NLRB 1113, 1117 (1981); and Addison-Gilbert Hospital, 253 NLRB 1010, 1011-1012 (1981). The Board has held that where RN licensing is not a job requirement, then RN education and training is not necessary to perform the job's functions. Salem Hospital, supra.

VI. RN REQUIRED

In this case, the documentary evidence is inconclusive as to whether an RN is required for the position. Without question, three of the four job postings since September 1999, including the most recent job posting, have required an RN license. In addition, the October 2002 job description required an RN license. The fourth job posting and the January 2001 job description are ambiguous as to the job qualifications.

The January 2001 job description describes the job qualifications as “RN, BSN preferred or BS degree in Social Work with equivalent clinical knowledge.” The February 15, 2001 job posting describes the job qualifications as “Registered Nurse, BSN preferred or BS Degree in Social Work with equivalent clinical knowledge.” The Petitioner contends that since the concluding phrase “BS degree in Social Work . . .” is juxtaposed with BSN preferred, and not with RN (or Registered Nurse) that both documents require an RN license.

The Employer, to the contrary, contends that the case manager’s job requires either 1) an RN, or preferably a BSN; or 2) a BS degree in Social Work with equivalent clinical knowledge.” Notwithstanding the Employer’s contention that its interpretation of the January 2001 job description and the related February 15, 2001 job posting is compelled by the language of these documents, I note that in quoting from the January 2001 job description in its post-hearing brief, the Employer has inserted a comma, which does not exist in the job description, after “BSN preferred.”

Given that the January 2001 job description and the February 15, 2001 job posting are ambiguous as to the RN requirement, and the October 2002 job description and three other job postings clearly require an RN license, the documentary evidence certainly suggests that an RN license is a requirement. Moreover, even given the Employer's reading of the January 2001 job description and the February 15, 2001 job posting, it is apparent that the clinical knowledge equivalent to an RN, which could have been substituted for an RN, has to be the knowledge of nursing.

While the documentary evidence regarding the RN requirement has some ambiguity, the actual experience in filling the case manager position does not. Thus, when the Employer posted the jobs for case manager within the hospital, it was not only RNs who were hired, but also it was predominately RNs who applied.

The Employer would explain the fact that predominately RNs have responded to the case manager job postings by asserting that the positions are more desirable than staff nursing.⁶ This explanation, however, ignores the fact that three of the four job postings specified RN licensure as a requirement of the position. In addition, the fourth posting required, even given the Employer's interpretation of its posting, clinical knowledge equivalent to that of an RN. Thus, it is logical that the requirements themselves have resulted in the pool of applicants being RNs.

In connection with the job posting that purportedly permitted equivalent clinical knowledge, the Employer interviewed non-RN applicants, but at the hearing, the Employer did not offer any evidence to show that the non-RN applicants, in fact, met the requirement of clinical knowledge equivalent to that of an RN. Thus, on this record, it cannot be determined whether there is any reasonably significant pool of non-RNs who possess the clinical knowledge equivalent to that on an RN.

⁶ There is testimony that RNs found the case manager position more desirable than staff nursing.

Most telling of the requirements for the case manager position is the actual hiring that has occurred over the last three and one-half years. During this period, all of the current full-time case managers have been hired. All of them are RNs. In addition, there is one part-time case manager, who was also hired during this period. She is also an RN.

By filling these positions with RNs, the hospital has indicated that it considered the positions as requiring nursing education and training, and acted accordingly. Thus, at the very least, since September 1999, the Employer has effectively required an RN for the case manager position.

In reaching this conclusion, I recognize that at present, two per diem case managers are not RNs, and that one of them, Cathy Donahue, had previously worked full-time as a case manager. Donahue had held the case manager position when it consisted of only discharge planning and was staffed with social workers. When this case manager position was merged with the utilization review position, which had been staffed with RNs, Donahue continued in the position. It appears that it was only because of the history of the case manager position that Donahue held the position on a full-time basis after the requirements were effectively changed. In effect, Donahue was “grandfathered” into this position.

The situation with the other non-RN per diem case manager certainly proves why the hospital requires an RN for the position. Mary Kay Cassarino is not an RN, and Cassarino’s functions have been limited because she lacked the clinical knowledge of an RN.

The fact that Donahue was “grandfathered” into the position and Cassarino’s functions have been limited distinguishes this case from Salem Hospital, supra. There the employer was in the process of training four social workers as case managers while here all case managers hired since September 1999 have been RNs.⁷

⁷ In fact, Cassarino had responded to the December 8, 1999 posting for a full-time case manager position, but was not awarded the position.

VII. OTHER COMMUNITY OF INTEREST FACTORS

The record discloses that full-time and regular part-time case managers are RNs who have regular but somewhat limited contact with staff RNs and patients and their families. Their work requires the utilization of traditional nursing knowledge and principles to ensure that the patient receives high quality care while the hospital efficiently utilizes its health care resources. Although the case managers do not provide direct patient care, their duties are directly related to the assurance of high quality patient care.

Their wages and benefits are comparable to those of the staff RNs. Moreover, the case managers' schedules are substantially similar to the educators who are in the RN unit. Further, the case managers are similar to the educators in their work areas, in their exempt status, and in their placement in non-nursing departments.

Based on the foregoing, I find that besides possessing RN licensure, the case managers otherwise share a sufficient community of interest with the staff nurses to warrant their inclusion in the existing bargaining unit. See Pocono Medical Center, supra at 399; Middletown Hospital Association, supra at 578; Frederick Memorial Hospital, supra at 39; Trustees of Noble Hospital, supra at 1445.

VIII. CERTAIN PER DIEMS INELIGIBLE

At the hearing, the parties stipulated that the following case managers were eligible to vote if an election were directed: Florence Andrasko, Linda Carlson, Debbie Chedister, Debbie Kear, Michelle Jones and Theresa Olesky. Thus, the parties have included in the voting group the four full-time case managers, the regular part-time case manager, and the per diem case manager who works the highest number of hours. By their stipulation, the parties have deemed Cathy Donahue and Mary Kay Cassarino, the two case managers working the fewest hours, ineligible to vote.

This stipulation on eligibility is fully consistent with the definition of regular part-time employees containing in the parties' collective-bargaining agreement covering the staff RNs.

The collective-bargaining agreement defines the staff RN unit as “all full-time and regular part-time staff nurses in accordance with the certification issued by the National Labor Relations Board in Case No. 6-RC-10973, and as more fully described in this article. . . .” The article then defines full-time employees and part-time employees in terms of the hours worked per pay period. A full-time employee is defined as one who is regularly scheduled to work 80 hours or more, or who is regularly scheduled for six 12-hour shifts, within a bi-weekly pay period. A part-time employee is defined as one who is normally scheduled to work 32 hours or more within a pay period. In so defining the RN unit, the parties have determined that the number of hours worked must be fairly substantial in order to ensure that part-time employees share a true community of interest with the full-time employees.

As set forth above, the per diem case managers do not work regularly scheduled hours; rather, the number of hours they work depends solely on the absence of a full-time or part-time case manager. In the case of per diem case managers Mary Kay Cassarino and Cathy Donahue, it is readily apparent that Cassarino, with 12.70 hours in the 12-week period ending shortly before the hearing, and Donahue, with 78 hours in the same period, do not meet the contractual threshold for a part-time employee and, as stipulated by the parties at the hearing in this matter, are ineligible to be included in the voting group. In contrast, during this same period, Andrasko worked 184.75 hours. While Andrasko’s hours do not appear to meet the precise contractual threshold for part-time status, they certainly show substantial, continuous and regular employment warranting her inclusion in the petitioned-for voting group in accordance with the parties’ stipulation.

The voting group as defined by the parties consists of only RNs and excludes case managers who are not RNs. This is a result of the parties’ agreement, based on the hours worked by the per diem case managers, and is not a division of the case managers based on the possession of an RN license, a course of action precluded by Salem Hospital, supra.

IX. DETERMINATION

On this record, I find that at the very least, since September 1999, the Employer has effectively required an RN license for the case manager position and that the case managers share a sufficient community of interest with the staff nurses to warrant their inclusion in the existing bargaining unit. Further, I find that the parties have defined the eligibility in the voting group, and that the two per diem case managers with the lowest hours are ineligible to vote. Thus, in this case, the eligible case managers share a sufficiently strong community of interest with the RN staff nurses to entitle these case managers to be represented by the Petitioner in the current collective-bargaining unit, if they so desire.

X. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a voting group which may vote whether or not they wish to be represented by the Petitioner in the current RN staff nurse unit:

All full-time and regular part-time case managers employed by the Employer at its Jeannette, Pennsylvania facility; excluding managerial employees and guards, other professional employees and supervisors as defined in the Act, and all other employees.

XI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting group found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Jeannette Professional Nurses Association/Pennsylvania Association of Staff Nurses and Allied Professionals (PASNAP). The date, time and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

If a majority of the valid ballots are cast for the Petitioner, the employees will be deemed to have indicated the desire to be included in the existing RN staff nurse unit currently represented by the Petitioner, and the Petitioner may bargain for those employees as part of the unit. If a majority of the valid ballots are cast against representation, the employees will be deemed to have indicated the desire to remain unrepresented. In that event, a certification of results will be issued.

A. Voting Eligibility

Eligible to vote in the election are those in the voting group who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Voting group employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date;

and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before **February 28, 2003**. No extension of time to file this list will be granted, except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 412/395-5986. Since the list will be made available to all parties to the election, please furnish a total of **two (2)** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so precludes employers from filing objections based on non-posting of the election notice.

XII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST (EDT), on **March 7, 2003**. The request may **not** be filed by facsimile.

Dated: February 21, 2003

Michael C. Joyce,
Acting Regional Director

NATIONAL LABOR RELATIONS BOARD
Region Six
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